



**FILED**  
ALAMEDA COUNTY

APR - 5 2012

By 

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

LIZ WILLIAMS,

Petitioner,

v.

CITY COUNCIL, CITY OF ALAMEDA,  
CITY CLERK, CITY MANAGER, CITY  
ATTORNEY, ALAMEDA COUNTY  
REGISTRAR OF VOTERS

Respondents,

and

HONORA MURPHY, BARRETT  
PARKER, ELLEN JEAN GRAHAM  
GILLIAT, THOMAS COBB and  
DOMENICK WEAVER,

Real Parties in Interest.

No. RG12622649

ORDER DENYING PETITION FOR  
WRIT OF MANDATE

The Petition of Liz Williams ("Petitioner") for Writ of Mandate came on regularly  
for hearing on April 5, 2012, in Department 31 of the above-entitled court, the Honorable

Evelio Grillo presiding. Petitioner appeared by counsel Barbara M. Thomas. Respondent Registrar of Voters for the County of Alameda appeared by counsel Raymond Lara, and Respondents City Council, City of Alameda, City Clerk, City Manager and City Attorney appeared by counsel Donna Mooney (hereinafter collectively referred to as "Respondents"). Real Parties in Interest Honora Murphy, Domenick Weaver and Barrett Parker ("Real Parties in Interest") appeared by counsel Karen Getman. Real Party in Interest Ellen Jean Graham Gilliat ("Ms. Gilliat") did not appear.

The Court has considered all of the papers filed in connection with the petition, and the arguments at the hearing and, good cause appearing, hereby DENIES the petition for writ of mandate, as follows:

#### BACKGROUND

On March 7, 2012, the City Council of Alameda held a Special City Council meeting, in which the City Council voted by approval of Resolution 14660 ("Resolution") to call a special election in Alameda to be consolidated with an already scheduled Presidential Primary election on June 5, 2012. The purpose of the election is to vote whether to enact an ordinance placing an additional sales tax of ½ % on all purchases currently subject to sales tax (hereinafter "Measure C").

On March 8, 2012, the Resolution was enacted, providing for proposed ballot arguments to be filed with the City Clerk by March 15, 2012. The City Clerk posted a notice of the March 15 deadline for filing ballot arguments on City Hall bulletin boards on March 8, 2012. The Registrar of Voter's website however, contained a deadline of

March 16, 2012 for filing arguments for or against ballot measures, but did not specify as to which jurisdictions the Registrars' published deadline applied.

On March 14, 2012, the City Clerk allowed argument for Measure C to be filed.

On March 16, 2012, one day after the deadline established by the City clerk for filing ballot arguments, Petitioner filed an argument against Measure C with the County Registrar of Voters. According to Petitioner, she filed her ballot argument with the County Registrar of Voters because the City Clerk is closed on Fridays.

Thereafter, on March 19, 2012, Petitioner received notice from the City Clerk that the City Clerk would not accept her argument because it was untimely.

Petitioner then filed this writ on March 23, 2012, asking the Court to:

1. Direct and compel Alameda County Registrar of Voters to delete Measure C from the June 5th ballot.
2. Direct and compel the Elections Official, the City of Alameda, and the Alameda County Registrar of Voters to strike the Ballot Title, Ballot Summary and Ballot Argument for Measure C on the Voter's Handbook Ballot itself for the June 5th election
3. Direct and compel the Registrar and City Clerk to delete all misleading statements from the Ballot Measure, Ballot Title and Summary
4. Direct and compel the Elections Official, the City of Alameda, and the Alameda County Registrar of Voters to include the Ballot argument Against Measure C, and Rebuttal arguments in the Voter's Handbook for the June 5<sup>th</sup> election.
5. Issue an alternative writ of mandate directing and requiring respondent to show cause before this Court, why the court should grant the above relief.
6. Grant other and further relief as may be just and proper including costs and attorney's fees
7. Grant a stay of all proceedings, pending review of this writ petition.

## SERVICE OF PROCESS ISSUES

Respondents and Real Parties in Interest object to the Court's jurisdiction on the ground that not all Real Parties in Interest have been served with this writ petition and notice of the hearing.

The Real Parties in Interest in this action are the signators on the "Declaration By Author(s) of Arguments or Rebuttals." The declaration requires that a person to contact and/or receive contact be listed in the declaration along with an address and phone number to contact. Here, Real Party in Interest Mr. Weaver lists his address as the point of contact as Post Office Box 1495 in Alameda. There is no dispute by the parties that Petitioner provided service at this address.

Additionally, Real Parties in Interest Mr. Weaver, Ms. Murphy and Mr. Parker have either waived service or consented to the Court's jurisdiction. Petitioner has also filed a proof of service indicating that Real Party in Interest Thomas Cobb has now been served.

Indeed, the only argument as to jurisdiction concerning Real Parties in Interest is that one of the five Real Parties in Interest, Ms. Gilliat, has not been served. However, given that Petitioner has filed proof(s) of service, the presumption is that service was proper unless a motion to quash is filed. (*Floyer Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795.) None of the parties have filed a motion to quash challenging the court's jurisdiction over this action though.

There is no dispute that all of the Respondents as well as 4 out of the 5 Real Parties in Interest have been served or submitted to the Court's jurisdiction via a general

appearance. Counsel for Real Parties in Interest also conceded that the Real Party in Interest Gilliat's only stake in this case is as to the ballot argument and opposition, and not as to the remaining substance of the petition.

Given that Petitioner served or attempted to serve all Real Parties in Interest at the address provided in the Declaration for contacting all Real Parties in Interest, and the fact of there being (1) no dispute regarding service on all parties other than Ellen Gilliat, and (2) no motion to quash pending, the task confronting the Court is to determine whether under the facts of the case, the notice Petitioner gave regarding this hearing was reasonably calculated under the circumstances to provide all parties both notice and an opportunity to be heard. (*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.) The Court answers this question affirmatively and finds it has jurisdiction to hear this petition. The Court therefore proceeds to rule on the substance of the writ petition and if appropriate to grant relief in mandamus.<sup>1</sup>

#### RESOLUTION OR ORDINANCE REQUIRED

California Elections Code section 9286 provides:

(a) Based on the time reasonably necessary to prepare and print the arguments and sample ballots and to permit the 10-calendar-day public examination as provided in Article 6 (commencing with Section 9295) for the particular election, the city elections official shall fix a date 14 days from the calling of the election as a deadline, after which no arguments for or against any city measure may be submitted for printing and distribution to the voters, as provided in this article. Arguments may be changed or withdrawn by their proponents until and including

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<sup>1</sup> Petitioner also contends that the "Declaration By Author(s) of Arguments or Rebuttals" should be stricken because real party in interest, Mr. Weaver, lives in Fairfield. However, Petitioner has not provided evidence to support this contention, and thus the Court rejects this argument.

the date fixed by the city elections official during the normal business hours of the elections official's office, as posted.

(b) The requirement in subdivision (a) that the period for submitting arguments for inclusion with the sample ballot materials must be 14 days from the calling of the election is not applicable when the election is consolidated with another election pursuant to Part 3 (commencing with Section 10400) of Division 10.

(Elec. Code, § 9286.)

Section 9286(a) provides that a 14-days notice period applies for submitting arguments for or against a city measure. In this case, the Resolution provided only for seven days for arguments for or against Measure C. Thus, if the time frame set forth in section 9286(a) applies, Petitioner should be allowed to file her argument against Measure C.

Respondents and Real Parties in Interest contend though, that section 9286(b) applies such that the 14-days notice for arguments is not applicable. As cited above, subsection (b) applies "when the election is consolidated with another election pursuant to Part 3 (commencing with Section 10400) of Division 10." (*Id.*) The issue, therefore, is whether section 9286(b) is applicable, and in order to make this determination, the Court must determine whether this special election was consolidated pursuant to Elections Code section 10400 et seq.

Upon its initial review of Elections Code section 10400 et seq., the Court was concerned as to whether Elections Code section 10403.5 applied, such that an ordinance was required to consolidate the elections. (See Elec. Code § 10403.5.)<sup>2</sup> Respondents and

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<sup>2</sup> Elections Code section 10403.5(a)(1) Any city ordinance requiring its general municipal election to be held on a day specified in subdivision (b) of Section 1301 shall be approved by the board of supervisors unless the ballot style,

Real Parties in Interest argued at the hearing though, that the Resolution was passed under Elections Code section 10403. This section states:

Whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city, or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. The question or proposition to appear on the ballot shall conform to this code governing the wording of propositions submitted to the voters at a statewide election. The resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election. The names of the candidates to appear upon the ballot where district, city, or other political subdivision offices are to be filled shall be filed with the county elections official

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voting equipment, or computer capability is such that additional elections or materials cannot be handled. Prior to adoption of a resolution to either approve or deny a consolidation request, the board or boards of supervisors shall each obtain from the elections official a report on the cost-effectiveness of the proposed action.

(2) A city, by itself or in concert with other cities, may purchase or otherwise contribute to the purchase of elections equipment, including, but not limited to, a computer for the purposes of conducting a consolidated election when the equipment shall be owned by the county.

(b) As a result of the adoption of an ordinance pursuant to this section, no term of office shall be increased or decreased by more than 12 months. As used in this subdivision, "12 months" means the period between the day upon which the term of office would otherwise have commenced and the first Tuesday after the second Monday in the 12th month before or after that day, inclusive.

(c) If an election is held on a day specified in subdivision (b) of Section 1301, and the election is consolidated with another election this part, except Section 10403, shall govern the consolidation and, if the county elections official is requested to conduct the municipal election, Section 10002 shall be applicable to that election.

(d) If a general municipal election is held on the same day as a statewide election, those city officers whose terms of office would have, prior to the adoption of the ordinance, expired no later than the next regularly scheduled city council meeting after receipt of the certification of the results from the elections official shall, instead, continue in their offices until not later than that meeting.

(e) Within 30 days after the ordinance becomes operative, the city elections official shall cause a notice to be mailed to all registered voters informing the voters of the change in the election date. The notice shall also inform the voters that as a result in the change in the election date, the terms of office of the elected city officeholders will be changed.

(Elec. Code, § 10403.5.)

no later than 81 days prior to the election.

(Elec. Code, § 10403.)

Here, the City Council's Resolution requested consolidation and set forth the ballot question. (See Petition for Writ of Mandate, Exh. 2.) Although the record does not establish whether transfer of the Resolution was timely, it was Petitioner's burden to show otherwise. (See e.g., Evidence Code § 664 (It is presumed that official duty has been regularly performed).) Petitioner has presented no evidence on this issue. In absence of such proof, and in view of the clear statement in Section 1 of Resolution 14660 that the City Council requested consolidation pursuant to Election Code section 10400 et seq., and in further view of the fact that the Resolution contained all of the information required for consolidation pursuant to section 10403 (and not 10403.5), the Court is persuaded that the Resolution was enacted pursuant to section 10403. It follows that the carve-out exception under 9286(b) applies rather than the 14-day time period under section 9286(a).

The record reflects that the Resolution and the City Council's authority authorizing the City Clerk to accept ballot arguments for and against the sales tax increase both established a March 15, 2012 deadline. (See City Manager Russo's Memorandum dated March 7, 2012, and City of Alameda Resolution 14660.) The evidence also clearly supports the fact of the City Clerk posting the notice on City Hall Bulletin Boards on March 8, 2012, and fixing the deadline for submittal of ballot arguments by March 15, 2012. (See Decl. of City of Alameda City Clerk Lara Weisiger



In Opposition To Ex Parte Application Of Petitioner For Order Shortening Time And Application For Stay; *see also* Decl. of City of Alameda City Clerk Lara Weisiger In Opposition To Petition For Writ Of Mandate.) Although the Court has grave concerns as to whether posting and providing only 7 days notice is sufficient notice to all interested parties, it is clear to the Court that the City complied with the letter of the law; and it is for the Legislature to address any shortcomings in the statutory scheme. Based on the existing Elections Code, it appears that section 9286(b) applies such that 14 days for submitting arguments was not required. Since the deadline for submission of arguments appears to have been properly fixed as March 15, 2012, Petitioner's submission of her arguments against Measure C on March 16, 2012 was untimely. The Court therefore DENIES Petitioner's request for relief to file her argument in opposition to Measure C.

#### BALLOT TITLE, BALLOT SUMMARY AND BALLOT ARGUMENT FOR MEASURE C

Petitioner contends that there are false and/or misleading statements contained in the Ballot Title, Ballot Summary and Ballot Argument for Measure C. In order to obtain relief though, Petitioner must meet a high threshold. Specifically, "a peremptory writ of mandate or an injunction shall be issued only upon clear and convincing proof that the material in question is false, misleading, or inconsistent with the requirements of this chapter, and that issuance of the writ or injunction will not substantially interfere with the printing or distribution of official election materials as provided by law." (Elec. Code § 9295(b)(2). (See *Horneff v. City & County of San Francisco* (2003) 110 Cal.App.4th 814 (Elections Code section 9295 does not vest the trial court with complete discretion and

clear and convincing evidence is the appropriate standard to determine whether a ballot measure must be amended); *Martinez v. Superior Court* (2006) 142 Cal.App.4th 1245 (ballot measures challenged under Elections Code section 9295 passed the clear and convincing standard).)

Petitioner contends that statements in the Ballot Title and Ballot Summary are false or misleading because they refer to a public safety measure instead of a sales tax increase. However, after reviewing the record, the Court finds that there is evidence to support these statements, and these statements are neither false nor misleading. (*See Real Parties In Interest Request for Judicial Notice Exhs. A and B; see also Decl. of City of Alameda City Clerk Lara Weisiger In Opposition To Petition For Writ Of Mandate, Exh. B.*)

Petitioner also objects to Measure C as being false or misleading because the “built in escape clause” allows the City Council to choose from any of the listed projects or none of them. However, the portion of Measure C to which Petitioner is objecting states that “[t]he City Council may choose not to pursue any particular project listed among those examples, may substitute unidentified but similar projects for those listed, and may decide the order in which projects are initiated and completed, as long as expenditures of revenue from the tax are consistent with the general categories of projects listed in this section.” The Court finds that including this provision makes it neither false nor misleading as it limits the Council’s discretion to “similar projects for those listed” and expenditures that are “consistent with the general categories of projects listed in this

section.” Thus, it does not give the City Council unfettered discretion as to projects upon which to spend these funds.

### CEQA CONTENTIONS

Finally, the statement that no CEQA (California Environmental Quality Act) review is required is not false or misleading. (See *Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Association of Governments* (2009) 179 Cal.App.4<sup>th</sup> 113 (holding sales tax measure intended to generate funding for certain transportation projects was not a “project” under CEQA because it did not commit the city to a definite course of action but contained only a brief, general description of projects without providing details or specifications and provided that these projects could be modified in the future.) Here, Measure C similarly describes only general projects that are eligible for funding, but does not commit the City to a definite course of action as to any particular project.

Petitioner’s request to strike the Ballot Title, Ballot Summary and Ballot Statement for Measure C is DENIED, and Petitioner’s request to delete all allegedly false or misleading statements is DENIED.

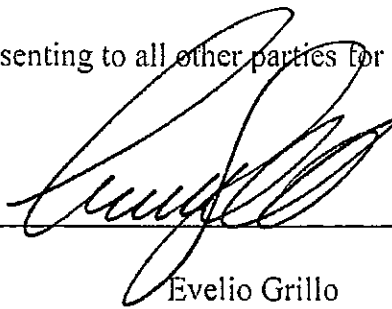
### CONCLUSION

Judgment shall be entered in favor of Respondents and Real Parties in Interest, and against Petitioner. Respondent City Council shall prepare and submit a form of Judgment

for execution by the Court after presenting to all other parties for approval as to form.

**APK - 5 2012**

Date: \_\_\_\_\_

A handwritten signature in dark ink, appearing to read 'Evelio Grillo', is written over a horizontal line.

Evelio Grillo  
Judge of the Superior Court